Supreme Court, U.S.
FILED
05161 0 MAY 22 2008
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No.

In The
Supreme Court of the United States

CYRUS Y. KIM,
Petitioner
VS.

DEPARTMENT OF LICENSING OF WASHINGTON STATE And THE AGENCY DIRECTOR FRED E. STEPHENS,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does Eleventh Amendment bar the constitutional judicial review of a state agency's actions and two state statutes (laws) that authorize the alleged unconstitutional actions surely repugnant to the Constitution?

2. Under Eleventh Amendment, can the state agency be exempt from even the suit based on and caused by the state agency's alleged **unconstitutional activities authorized** by the alleged state **unconstitutional laws**?

3. Under Eleventh Amendment, can the state agency be exempt from the suit based on and caused by the state agency's non-sovereign activities, those not fundamental to its nature as a government, for insurance company business of the agency like a subdivision of insurance companies, giving preference to commercial entity, insurance companies, which is barred by Art. I, Sec. 9, Cl. 6?

4. Is the doctrine of STARE DECISIS under Eleventh Amendment absolutely inviolable even in case of this suit with a good cause of a clearly different constitutional basis?

A LIST OF ALL PARTIES

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Respondents:	
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Department of Licensing of Washington State	P.O. BOX 9020 Olympia, WA 98507-9020
Agency Director Fred E. Stephens	P.O. BOX 9020 Olympia, WA 98507-9020
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CASES

ıy case whose constitutional basis is based on and caused by ıconstitutional acts authorized by an unconstitutional law for ın-sovereign activities, activities not fundamental to its nature as government, is nowhere to be found. Some cases are based on ıconstitutional acts violating constitutional laws for the sovereign tivities, but those cases are so different cases from this suit.

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WASHINGTON STATE STATUTES

ıapter 46.29 Financial Responsibility Code (Wash. Rev. ıde §§46.29) and Chapter 46.30 Mandatory Liability ısurance Code (Wash Rev. Code §§46.30)

RCW 46.30.010.....9, 10, 12, 13
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I. OPINIONS BELOW

Order denied the petition for rehearing en banc of United States Appeals Court judges for the ninth circuit rendered on May 3, 2006, is reprinted at App. p. A-1. Affirmed judgment of United States Appeals Court judges for the ninth circuit rendered on February 22, 2006, is reprinted at App. p A-1. Order granting motion to dismiss of United States District Court judge rendered on July 25, 2005, is reprinted at App. p. A- 3.

II. JURISDICTION

A timely petition for rehearing was denied by the United States Court of Appeals on **May 03, 2006.**

The date on which the United States Court of Appeals decided my case was **on February 22, 2006.**

This petition for writ of certiorari is timely because petitioner filed within less than 45 days of May 3, 2006. Jurisdiction is conferred upon the Courts by 28 U.S.C.A. § 1331.

III. STATEMENT OF THE CASE

A. THREE REPEATED SUSPENSIONS OF DRIVER'S LICENSE

In the name of the sovereign of Washington State, the department of licensing of Washington State ("the department") suspended petitioner's driver's license three times for seven years for **the purpose to urge to pay $5,487.00 an insurance company, Progressive, paid as below.** These activities of the department are not for those fundamental to its nature as a government, but for the insurance company business of the department to give preference to the insurance companies that is barred by Art. I, Sec. 9, cl.6, "*No preference shall be given by any Regulation of Commerce or* ..."

First suspension of driver's license (App. p. A- 5)

The department suspended petitioner's drivers license, **"driving privilege"** and vehicle license plate, KSG200 **on June 4, 1999 at 12:01 a.m.** as required by the provisions of the Financial Responsibility Law of Washington State, RCW 46.29.

Second suspension of driver's license (App. p. A – 7)

On February 9, 2001, the department suspended second ne for the same purpose.

Third suspension of driver's license (App. p. A – 8)
On February 10, 2005, the department suspended third time r the same purpose.

B. IMPACT FROM CONTINUOUS REPEATED JSPENSIONS

The continuous and repeated suspensions for the insurance mpany business of the department in the name of pseudo-vereign authority caused petitioner's personal properties to lose id damages to petitioner, for which the respondents are severely sponsible, because they wrongly, deceivingly used the sovereign wer or authority for non-sovereign activities authorized by the leged unconstitutional laws.

1. Lost personal properties being worth $501,850.00

The continuous suspension caused emission test impossible id caused petitioner's vehicle taps of both cars to be expired. partment manager did not allow vehicles with expired taps. ithout a warning of impounding, one car was towed away. In ipounding hearing, a municipal court judge, David Tracy, dered to pay the storage fees of $570 as an abandoned car, ying that the towing signs in the apartment complex were a arning notice. Under tenancy in common, each tenant owns an idivided interest, a fraction of each part of the parking lot; vertheless, the judge's judgment as abandoned car made titioner's another car and personal properties lose. Petitioner did t have any chance to check off the impounded car trunk. Right ter the judge's judgment as an abandoned car, the apartment anager warned to remove another car out of the apartment mplex, otherwise, "to be impounded at petitioner's cost." This r was given away to a stranger after checking off inside the trunk. most two years later, petitioner realized for the first time that the ost valuable personal property was left in the impounded car nk (Ford Thunderbird). But, it was too late to recover it.

Due to the expired vehicle taps, or due to the insurance mpany business of the department, lost personal properties were

worth approximately $501,850 including two cars. This suit requesting some compensation for the lost properties and claiming damages caused by alleged unconstitutional, non-sovereign activities was dismissed under Eleventh Amendment. So, respondents has been using Eleventh Amendment as a complete shield for the insurance company business of the department in the name of pseudo-sovereign although their activities have made petitioner loss, which contradicts Fifth Amendment.

2. Continuous suspensions forced to be hit by cars and medical bill reached $341,876.54

On July 29, 2002, petitioner was hit by a car on a crosswalk during returning home riding on a bicycle from the post office. The cost was over $10,000.

On November 20, 2002 around 3:00 p.m. petitioner's mother who has been living with me for 21 years was hit by a car on a crosswalk of Highway 99 during returning home after buying medicines for her high blood pressure and coughing cold and fishes to cook for dinner. For 36 days in Intense Care Unit of Harborview hospital and for 34 days in Kindred hospital, the medical bills reached $341,876.54. On January 29, 2003, she came home. My mother lost her original voice function; still, she cannot walk as much as she did before the accident; and she cannot sit down on the floor due to the knee injury. And home caring until now for three years four months. Still she is suffering ill-regular heartbeat and congested heart failure two or three times a month from the liquid in the injured lung until now.

3. The fine of a traffic infraction ticket

On September 26, 1997, petitioner received an infraction ticket of $500 for no automobile insurance. Petitioner paid $310 for the fine to the clerk in the district court of Federal Way.

4. Actual, physical interference and obstruction to work

Continuous suspension of the driver license blocked working, such as a real estate sales person, and worsened to pay the unpaid insurance company's money. Except shopping for food and

ıedicines by foot, going to a nearby hospital with two buses takes vo hours for one-way trip, in spite of just a ten-minute driving istance. A job interview from Federal Way to Everett community ɔllege took three hours with five buses for just one-way trip in ɔite of 50-minute driving distance (left home: at 6:00 a.m. arrived : 9:00). More serious problem was that no company tried to hire ɛtitioner with suspended driver's license, because of the ıspicious credibility. Thus the suspensions interfered and ɔstructed working actually and physically and worsened living.

C. COMMENCEMENT OF SUITS AND AUTOMATED ISMISAL

I, petitioner, commenced present suit against the department ıd the director of the department on March 25, 2005. My present ıit has two parts; First part is challenging the constitutionality of ıe department's actions of three suspensions of driver's license ır the purpose of insurance company business of the department ıd two statutes (regulations) that authorize the department's ɛtions or clearly demanding federal judicial review of the ɛpartment's actions and the two statutes. Second part is ıallenging the director's negligence left the two statutes egulations) unconstitutional, because the department's actions ıused petitioner to lose properties and damages. So, the second ırt is contingent on the decision of the first part. It will be ɔntested only from the time when the first part is declared ıconstitutional. If constitutional, second part automatically will ıd.

Even though Eleventh Amendment has not been the bar to deral judicial review of state action and my present suit as well ; my old suits has different constitutional basis from that of the ɛcedent cases, all suits were dismissed under the Eleventh mendment as below. The constitutional basis of my present suit that the suit is based on and caused by the department's alleged ıconstitutional acts authorized by alleged unconstitutional laws ır the insurance company business, for non-sovereign activities.

Old suit 1, Kim v. State, No. C04-021Z: On January 30,)04, petitioner commenced a suit based on the first suspension,

challenging the constitutionality of two Washington State statutes, Mandatory Liability Insurance ("MLI') law and Financial Responsibility ("FR") law, and seeking relieves for the lost properties and damages caused by the suspensions against Washington State. This suit had two parts. On April 5, 2004 this case was dismissed under Eleventh Amendment.

Old suit 2, Kim v. State, No 04-2-10000-3 SEA: On April 29, 2004 petitioner filed a second complaint based on the first suspension, challenging the constitutionality of MLI and FR law against Washington State and claiming the same as the old suit 1 in State Superior Court. This suit also had two parts. On July 23, 2004 this case was dismissed under Eleventh Amendment.

Old case 3, Kim v. Director of the department, No. C04-2244C: On November 22, 2004 petitioner filed a third complaint based on the first suspension, challenging the constitutionality of MLI and FR law against Director of the department in the district court of United States. This suit also had two parts. On January 19, 2005, this case was dismissed under Eleventh Amendment.

Problems: All judges only focused on the contingent second part and wrong part of Eleventh Amendment quoting cases having different constitutional bases, which are unrelated to my present suit, by disregarding more important the first part. All quoted precedent cases are based on the violation of a constitutional law. No case based on the alleged unconstitutional acts authorized by alleged unconstitutional regulations (statutes or laws) is found.

The judges' mixed opinion

Reason of dismissal of district court judge: "*...and this action is DISMISSED on the basis of* ***res judicata*** *and* ***for lack of jurisdiction***." (App. p. A–5, the last line).

Reason of affirmed judgment of Appeals Court three judges for the ninth circuit: "*...the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging defendants violated his civil rights by suspending his driver's license due to his failure to obtain insurance... We review de novo, Montana v. Goddin...we*

ffirm." Petitioner never made a claim for violation of my civil ghts under 42 U.S.C. § 1983.-

IV. ARGUMENTS FOR GRANTING THE PETITION

1. Misuse of the doctrine of Sovereign Immunity contradicts rt. VI, cl.2.

The first part of this suit is clearly challenging the onstitutionality of the actions of the department and the State two atutes that authorize alleged unconstitutional actions, or emanding the federal judicial review of the department's actions id the statutes. However, this suit was dismissed as a whole under ie Doctrine of Sovereign Immunity, or the courts denied even the onstitutional judicial review of the department's alleged nconstitutional actions and the laws under the Eleventh mendment.

The denial itself under this doctrine contradicts directly Art. I, cl.2.

Art. VI, cl.2 of the Constitution is read as follows:

"This Constitution, and the Laws of the United States which hall be made in Pursuance thereof..., shall be the Supreme Law of e Land..."

By Art. VI, cl.2, any state or its any agency cannot make any nconstitutional law that is **not *"in Pursuance of the onstitution"*** and cannot commit **any unconstitutional wrong** by ny unconstitutional law.

However, under the doctrine of Sovereign Immunity, the enying of federal judicial review of the alleged unconstitutional ate agency's acts and the state statutes that authorize the alleged nconstitutional activities eventually authorizes the state to keep e unconstitutional law and to keep committing any nconstitutional wrong by the unconstitutional law. Thus, the isusing of this doctrine rather makes a shield to protect any State · its agency's any unconstitutional activity authorized by any nconstitutional law, which directly contradict Art. VI, cl.2.

First, any law of any State must be *made in Pursuance of*

Constitution by Art. VI, cl.2, "*... the Laws of the United States which shall be made in Pursuance thereof...*"

Second, as watchtower, safeguard or guardian for the Constitution, *the Supreme Law of the Land*, the courts have the power to invalidate governmental and state action that is repugnant to the Constitution. **Which is the constitutional mandate by priority for all state judges as well as federal judges to follow** Art. VI, cl.2, "*... and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the contrary notwithstanding.*" Especially, the indication of "***judges in every State***" emphasizes that even "*judges in every State*" cannot be alienated from the mandatory obligation. **So, it is needless to say that judges of the United States Courts must be comprised and follow it.**

Accordingly, applying of the doctrine of sovereign immunity to the suit challenging the constitutionality of state statutes and the department's acts was a misuse of the doctrine ignored Art. VI, cl.2. The court must make a scrutiny into the constitutionality of the state statutes and actions by priority as long as the *Constitution is the Supreme Law of the Land.* Which is a constitutional mandatory obligation and mandate.

2. The doctrine of Sovereign Immunity cannot be applied to the suit based on and caused by unconstitutional activities authorized by any unconstitutional law.

The doctrine of sovereign immunity was inherently based on the maxim "*the king can do no wrong. This rationale is inapplicable in the United States since it was rejected in the Declaration of independence (440 U.S. 410, 415).*" So, in the United States, the Constitution is the great king and the laws of states are little kings who *must be made in Pursuance of the Constitution.* At the moment any state law is not *made in pursuance of the Constitution*, **the law has become to lose the ground to stand as the sovereign under the Constitution**, because the state has already become alienated from the protection of the Constitution. Also, **the rationale** of that "*the sovereign is exempt from suit on the ground that there can be no legal right against the authority that makes the law on which the right*

:pends (205 U.S. 349, 353)" **loses the ground to stand because ıe state sovereign not *in pursuance of the Constitution* has ready escaped from the range of protection by Eleventh mendment at the moment when the state law is not *made in ursuance of the Constitution, the Supreme law of the Land.*** ıch state sovereign has become an independent sovereign (state) ıt of the Constitution. Thus, Under the Constitution, any dependent sovereign cannot exist and cannot be protected by this ɔctrine. Therefore, this doctrine cannot be applied to any suit ısed on and caused by any unconstitutional act authorized by any ıconstitutional law.

If the doctrine is applied to any suit claiming damage based ı and caused by any unconstitutional state agency's activity ıthorized by any unconstitutional law, it eventually allows and ıthorizes that any state or its agency can do more unconstitutional rongs and make more unconstitutional laws at citizens' cost. It ɔesn't need to make any compensation or refund, because any ıit claiming damage, compensation, or refund against the state or ; agency will be surely dismissed under this doctrine. It's clear at it contradicts Art. VI, cl.2 and Fourteenth Amendment, "*nor :all any State deprive any person of life, liberty, or property, ithout due process of law.*" Thus, any suit in **unconstitutional** w or any suit claiming damages based on and caused by the ıconstitutional acts authorized by the state unconstitutional law ust be excluded from this doctrine, Eleventh Amendment.

Let's take an extreme example:

Suppose that one of United States adopted the theory of ɔmmunism and expropriated all properties of the rich for welfare the poor with one hundredth of market price by a newly enacted w. All the rich became the victims by the alleged ıconstitutional law. One of the rich commenced a suit for :manding the review of the constitutionality of the state statute ıd for recovering his property expropriated by the alleged ıconstitutional law against the state. In this situation, can the ɔurt deny this suit under Eleventh Amendment? If so, the lost ·operties will never be recovered. Even though "***EMINENT OMAIN** is an inherent attribute of sovereignty, 15A. 2d 647,"* e Fifth Amendment to the Constitution requires "*just ɔmpensation.*" But personal properties lost even by the

unconstitutional activities authorized by any unconstitutional law for the activities with the attribute of non-sovereignty end in loss at citizens' cost without any compensation, which contradicts the Fifth Amendment. The misuse of this doctrine brings huge chaos.

3. The doctrine of Sovereign Immunity cannot be applied to the suit based on and caused by non-sovereign activities, those not fundamental to its nature as a government.

Government activities fall into two general categories:

One category is Government activities fundamental to its nature as a government or for fundamental governmental functions, such as passing of legislation, providing police services, or taxation, and the other category is proprietary activities or done for the benefit of particular citizens, such as providing a swimming pool.

a. Illegitimate authority

> **46.30.010 Legislative intent** of **Mandatory Liability Insurance law:**
> It is a privilege granted by the state to operate a motor vehicle upon the highways of this state. The legislature recognizes the threat that uninsured drivers are to the people of the state. In order to alleviate the threat posed by uninsured drivers it is the intent of the legislature to require that all persons driving vehicles registered in this state satisfy the financial responsibility requirements of this chapter…

No matter how plausibly one may camouflage *the Legislative intent (46.30.010)*, **legitimate authority cannot be created** from an illusory hypothesis of "*the threat that uninsured drivers are to the people of the state.*" No matter how hard one may make desperate efforts, a fundamental governmental function cannot be created from a proprietary function. Let's look at it.

As if uninsured drivers had been causing serious, critical social problems against public, after having fabricated the illusory "*threat*" into such situation, to deal with such situation and to make legitimate delegation, the MLI law was enacted, taking effect

nuary 1, 1990.

Administrative agencies usually are created to deal with rrent crises or to redress serious social problems –i.e. vernment's response to a public demand for action to establish a w agency granting new powers:

Enabling Statute, passed by Congress and signed by esident [the basic structure for the state level agency is common, d there must be a standard or criterion provided by Congress.], ecifies the purpose of agency and the attributes of agency power d creates agency and at the same time gives broad power to the dministrative Agency with delegated authority to implement its ission. From this Legitimate Delegation, the administrative gency creates rules, regulations, orders, and hearings. Here the gulations have the force of law, just as a statute passed by the gislature when they are adopted.

The Purpose of Creating the Department of Licensing is not r dealing with automobile insurances of uninsured drivers, but aling with license and licensing for citizens living. So, *gislative intent of 46.30.010* is nothing but crafty disguise **to ake legitimate authority for insurance companies.**

Moreover, MLI law took effect January 1, 1990, as Effective te. It's clear that *Legislative Intent (46.30.010)* was implanted far er and the legitimate delegation was not made to the department licensing **originally.** The time discrepancy between creating the partment and *legislative intent* reveals illegitimate delegation.

To be valid, a regulation must be consistent with Art. VI, cl.2, nust not exceed the power conferred on the agency by Congress ginally, and must be created and consisted with procedural rules ovided in the Administrative Procedural act (APA) for creating : regulation. It does not matter whether legislation by legislative publication of the Federal Register. So, "*... all persons driving hicles registered in this state satisfy the financial responsibility quirements of this chapter...*"has no ground of legitimate thority.

b. Unenforceable unlawful fine of traffic infraction

46.30.020 (1) (a) of **MLI law** provides that "no person may operate a motor vehicle... unless the person is insured..." and 46.30.020 (1) (d) provides, "Failure to provide proof of

motor vehicle insurance is **a traffic infraction** and **is subject to penalties as set by the supreme court under RCW 46.63.110** or **community service."**

"Not having automobile insurance" does not cause car accidents and does not violate taxation or public safety. It isn't wrongful antisocial conduct, any overt act of wrongdoing, nor even regulatory offense against public safety. All uninsured drivers are not culprits of all car accidents, reckless drivers violating speed limits, drunken drivers, hit and run drivers, nor antisocial groups. They are not doing forbidden acts. **Just low-income causes uninsured drivers**. Compelling all drivers to have motor vehicle insurance is not for fundamental governmental function, but for insurance companies. Thus, *"no person may operate a motor vehicle... unless the person is insured..."* is the depriving of driving privilege already entitled for living by Art. IV, Sec. 2, cl.1, *"The Citizens of each State shall be entitled to all Privilege..."* due to no automobile insurance, which violates Fourteenth Amendment, *"No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States;"* and *"Failure to provide proof of motor vehicle insurance is **a traffic infraction** and **is subject to penalties ...or community service"*** has no constitutional ground to impose a fine of a traffic infraction for non-sovereign activities, insurance company business giving preference to the insurance companies, which is barred by Art. I, Sec.9, cl.6, *"No Preference shall be given by any Regulation of Commerce or..."* Accordingly, 46.30.020 (1) (a) and (d) are unenforceable and unlawful provisions. So, the fine of traffic infraction is also unenforceable and unlawful fine, and thus the department must refund all the fines imposed and collected.

c. Violation of Art. I, Sec. 10, cl. 1

The provision of Financial Responsibility law, 46.29.090 (Requirements as to policy or bond) (1):

...if the accident has resulted in bodily injury or death, ... not less than twenty-five thousand dollars... bodily injury to or death of one person in any one accident and, subject to said limit for one person, not less than fifty thousand dollars...bodily injury to or death of two or more persons in

any one accident, and if the accident has resulted in injury to, or destruction of, property to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident.

This provision giving preference to the insurance companies ıakes leave many cases that medical bills far exceed this statutory mit required by this provision unresolved, because most drivers ıoose minimum limits to avoid ***traffic infraction and is subject to enalties or... community service***. So, 46.30.010 *Legislative intent* f **MLI** does not settle "*the threat*", all the money problems ıvolved in car accidents, but rather it makes more unresolved roblems, the civil court battle. Thus, the desperate effort to create ındamental government activities over the territory of original ·ivate law, contract, is for **nothing but giving preference** for :curing more insured drivers to commercial units, insurance ɔmpanies for insurance company business.

The duress of imposing *traffic infraction, penalties, or ɔmmunity service by 46.30.020 (d)* against the driver with no ıtomobile insurance also impairs the obligation of contracts, the ·ms under a contract of insurance premium and the coverage. he unjust influence to the contract of insurance premium and the ɔverage under the duress of imposing *traffic infraction, penalties, community service* violates Art. I, Sec.10, cl.1, which is barred y Art. I, Sec. 10, cl.1, "*No State shall pass...Law impairing the bligation of Contracts...*"

d. Violation of equal protection of laws and Art. I, Sec. 9, .6

The provision of *46.30.030 (Insurance identification card)* :quires that "*the insurer shall provide the policyholder a card for ıch vehicle covered under the policy.*" By this provision, each ·iver having two more cars must have **each motor vehicle ability insurance policy** for each car. The purpose of this ·ovision is intentionally focused on maximizing the effect of :curing more automobile insurance for insurance companies, on e hypothesis that the driver does not make any car accident, but e car makes each accident. One kind of automobile insurance ith wide coverage for each driver is enough regardless of the

number of cars any driver owns like insurance for various kind of jewelry. What if each driver has one kind of automobile insurance regardless of the number of cars any driver owns? It becomes clear that it makes less profit for insurance companies. So, this provision stands on the purpose of giving strong preference in some way to insurance companies for securing more insured drivers for more profit. But making each driver have "**each motor vehicle liability insurance policy for each car**" is not for the fundamental governmental function, but for insurance company business. Whether or not having motor vehicle liability insurance is in the territory of the private law, **contract for which the department cannot use the sovereign power of the state for this purpose of making have each motor-vehicle-liability insurance for each car.**

> 46.30.040 (Providing false evidence of financial responsibility-Penalty): Any person who knowingly provides false evidence of financial responsibility to a law enforcement officer or to a court, including an expired or canceled insurance policy, bond, or certificate of deposit is guilty of a misdemeanor.

This provision is also focused on the purpose of giving preference to insurance companies, by making law enforcement officers or courts check off whether or not having automobile insurance. For the insurance company business, not for fundamental governmental activities, law enforcement officers and judges check off whether or not having automobile insurance with dignity. But surprisingly their salaries come from tax-dollars.

For the insurance company business giving preference to insurance companies, the "classification of uninsured drivers" of *46.30.010, Legislative Intent, "the threat that uninsured drivers are to the people of the state"* violate not only Fourteenth Amendment, "*equal protection of laws,*" but also Art. I, Sec.9, cl.6, "*No Preference shall be given by any Regulation of Commerce or...*"

46.29.110 (Failure to deposit security-Suspensions):

If a person required to deposit security under this chapter fails to deposit such security within sixty days after the department has sent the notice as hereinbefore provided, the department shall thereupon suspend: (1) The driver's license of each driver in any manner involved in the accident;

The *deposit security* does not mean the entire medical bill far ‹ceeding the insurance coverage, but it means the money any ısurance company paid. Thus, the "*suspensions for failure to ²posit security* of 46.29.110" is for insurance company business : the department, giving complete preference to the insurance ›mpanies like a subdivision of insurance companies. The ·ovisions of *46.29.140 (Agreements for payment of damages)(1), '), and (3) clearly* provide the insurance company business of the ²partment, such as taking action of suspension ***upon notice of ıch default*** **from any insurance company.**

(1) Any two or more persons involved in ... an accident...may at any time enter into a written agreement for the payment of an agreed amount... of such persons or property damage arising from such accident... may file a signed copy thereof with the department.

(2) The department, to the extent provided by any such written agreement filed with it, shall not require the deposit of security and shall terminate any prior order of suspension, or, if security has previously been deposited, the department shall immediately return such security to the depositor or his personal representative.

(3) In the event of a default in any payment under such agreement and **upon notice of such default** the department shall take action suspending the license of such person in default as would be appropriate in the event of failure of such person to deposit security when required under this chapter.

46.29.080 (Exceptions as to requirement of security) The requirements as to security and suspension in this chapter shall not apply:

(1) No suspension to the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident."
(9) To the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, this state or any political subdivision of this state or a municipality thereof, or to the driver of such vehicle if operating such vehicle with permission;

46.29.280 (Suspensions continue until proof furnished): Whenever, under any law of this state, the license of any person is suspended or revoked by reason of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed, the suspension or revocation hereinbefore required shall remain in effect and the department shall not issue to such person any new or renewal of license until permitted under the motor vehicle laws of this state, and not then unless and until such person shall give and **thereafter maintain proof of financial responsibility for the future. Upon receiving notice of the termination or cancellation of proof of financial responsibility for the future,** the department shall re-suspend or re-revoke the person's driving privilege until the person again gives and thereafter maintains proof of financial responsibility for the future.

The insurance company of a driver hit petitioner's mother paid $110,000, less than one third of the medical bill of $ 341,876.54 and cost of homecare. But by 46.29.080 *(Exceptions as to requirement of security)*, the department cannot suspend her driver's license even though she did not pay more than twice as much as she paid, whereas by 46.29.280 *(Suspensions continue until proof furnished)*, petitioner's driver's license has been being suspended three times for seven years until now against the unpaid insurance company's money of $5,487.00. Although $5,487.00 is far much less than $231,876.54 exclusive of homecare cost until now, the suspensions will continue until $5,487.00 would be paid by 46.29.280, which violates Fourteenth Amendment, "*the equal protection of the laws.*"

46.29.080 *(Exceptions as to requirement of security) (9)* is e provision exempt from *requirement of security.* This is a mimic ovision of TAX EXEMPT. Its ground is nowhere to be found, hich is violating "*the equal protection of the laws.*"

Whenever the department receives the notice of the rmination or cancellation from any insurance company by 5.29.280, the department "*shall re-suspend or re-revoke the rson's driving privilege until the person again gives and ereafter maintains proof of financial responsibility for the ture.*" This provision for the department's actions of *re-spending or re-revoking the person's driving privilege* for mpletely securing future insured driver gives not only simple eference to insurance companies but also a complete preference r future business as a subdivision of insurance companies. So, .29.080 and 46.29.280 clearly reveal that the department's tivities are not based on the activities fundamental to its nature a government, which violates Art. I, Sec. 9, cl.6, "*No Preference all be given by any Regulation of Commerce...*" Moreover, the partment can suspend driver's license for a lifetime by 46.29.280 *uspensions continue until proof furnished),* which is barred by ghth Amendment, "*...nor excessive fines imposed, nor cruel and usual punishments inflicted.*"

If the laws of MLI and FR for the insurance company siness of the department being maintained for at least 16 years in : name of the sovereign of Washington State are revealed as constitutional laws, what will happen in 46 States having the vs of the same names?

e. The meaning of three repeated suspensions

Unpaid insurance company's money was not unpaid tax, did : distract or obstruct other driver's driving, did not violate public ety, did not harm public safety, and did not disturb a damental governmental function. Even though the first pension remained in effect by the provisions of 46.29.140 (4), *ch suspension shall remain in effect and such license shall not restored unless and until: (a) Security is deposited...*" and 29.170 (Duration of suspension), "*any order of suspension by department... shall remain in effect... until...shall be posited...the security required...*" and 46.29.280, "*the*

suspension or revocation hereinbefore required shall remain in effect...unless and until such person shall give and ***thereafter maintain proof of financial responsibility for the future,"*** the department repeated the suspensions three times for urging and coercing to pay security deposit, the money an insurance company paid. These repeated activities are not those fundamental to its nature as a government. They are not for passing of legislation, for providing police service, for taking private property for public use, nor for taxation. These activities are just for the insurance company business of the department like a subdivision of insurance companies. In the name of the sovereign of Washington State, the department suspended three times for 7 years only for insurance company business of the department only to urge to pay the money an insurance company paid and to give preference to insurance companies, which is barred by Art. I, Sec. 9, cl.6, "*No preference shall be given by any Regulation of Commerce or...*" and *inflicting unusual punishment*, which is barred by Eighth Amendment, *"...nor excessive fines imposed, nor cruel and unusual punishments inflicted."*

4. Abuse of the doctrine of STARE DECISIS and Sovereign Immunity

Any case based on alleged unconstitutional actions authorized by alleged unconstitutional law for the non-sovereign activities, those not fundamental to its nature as a government, giving preference to commercial unit, insurance companies, which is barred by Art. I. Sec. 9, cl.6, is nowhere to be found. However, seeing the name of State or its agency as a defendant, the judges of the lower courts unmistakably applied the doctrine of Eleventh Amendment to this suit demanding federal judicial review of the department's actions and the laws (regulations) that authorize the department's actions without any consideration on the constitutional basis. A real serious mistake can be seen through the affirmed judgment of Appeals Court for the Ninth Circuit:

The footnote (App. p. A-4) of district court judge indicated as "*Plaintiff has nowhere in his complaint made a claim for*

olation of his civil rights under 42 U.S.C. §1983." However, ree judges of appeals court for ninth circuit quoted as (App. p. A-:

> *...the district court's judgment dismissing his 42 U.S.C. §1983 action alleging defendants violated his civil rights by suspending his driver's license due to his failure to obtain insurance. We review de novo, Montana v. Goldin (In re Pegasus Gold Corp.) 394 F.3d 1189, 1193 (9th Cir. 2005), and we affirm.*

Petitioner never made any claim for violation of my civil ;hts under 42 U.S.C. § 1983, and the case of "*Montana v.)ldin*" is affirmed judgment of the bankruptcy court. The feeling terrible in the unsimilarity between the case and my suit ıctuates between fear and disappointment from the expectation ıt Appeals Court judges would have deep knowledge able to read tween lines.

> *Pennhurst State Sch. & Hosp. v. Halerman*, 465 U.S. 89, 101 (1984) ("The Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest.")

This case says "*It was alleged that conditions at Pennhurst lated various federal constitutional and statutory rights of the ss members as well as their rights under the Pennsylvania ntal Health and Mental Retardation Act of 1966.*"

The allegation of "*...violated various federal constitutional d statutory rights...*" and the allegation of unconstitutional ncy's actions authorized by unconstitutional statutes of my suit e respectively so different constitutional bases: nevertheless, judges quoted as "*The Eleventh Amendment bars a suit against te officials when the state is the real, substantial party in erest.*" Petitioner, I don't know yet whether judges' job is that seeing chalk, they decide it as cheese.

Although the doctrine of STARE DECISIS is not inviolable a good cause and "*the doctrine is of particularly limited*

application in the field of constitutional law (298 U.S. 38. 94)," the judges repudiated the consideration of the unconstitutional basis based on alleged unconstitutional actions authorized by alleged unconstitutional laws for the non-sovereign activities. As a result, they applied the "immunity" for the sovereign to the non-sovereign that must be the sovereign. The judges did not think of the constitutional basis of the suit that each case has and the inherent purpose of Eleventh Amendment. On seeing the name of state agency as defendants, they affirmed saying as "*The Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest.*"

The second part of this suit claiming damages to the responsible and liable party for the lost properties and damages caused by the actions can be contested only when they are decided as unconstitutional. So, the reason of the judgment, "*the Eleventh Amendment bars a suit against state officials when the state is the real party in interest,*" is clearly barking up the wrong tree and too much early decision. On seeing eggs, they jumped at a conclusion that they were chickens.

V. CONCLUSION

"To be the sovereign," the laws authorizing the activities must be made in pursuance of the Constitution as long as the Constitution is "*the supreme law of the land*," and the activities must be those for sovereign authority, those fundamental to its nature as a government.

"To be exempt from any suit against the sovereign," it must be the sovereign "in pursuance of the Constitution."

Accordingly, when the doctrine of Eleventh Amendment is applied wrongly, it only makes a shield to protect all kind of unconstitutional acts authorized by all kind of unconstitutional laws as well as all kind of unconstitutional laws in the name of the sovereign.

By making clear that any unconstitutional action authorized by any unconstitutional law as well as the unconstitutional law in the name of pseudo-sovereign cannot be protected and any suit based on and caused by such activity cannot be exempt under the doctrine of Eleventh Amendment, to shut off future attempt to enact any unconstitutional law under political influence or

obbying of any interest group, and to urge to revise any existing inconstitutional law in pursuance of the Constitution as long as the Constitution is *the supreme Law of the Land*, the constitutionality of the actions of the department of licensing of Washington State and the statutes of Mandatory Liability Insurance and Financial Responsibility should be reviewed. If those are declared as inconstitutional, the constitutionality of the two statutes with the same names having been being enforced in 46 states for at least 16 years will be decided automatically and the jury in the trial court will easily decide whether or not respondents (defendants) are liable for properties lost and damages caused by their inconstitutional, non-sovereign activities and will have a chance to chastise the respondents who have been using the sovereign authority of Washington State for insurance company business and who have been deceiving Washington citizens for the pseudo-sovereign activities for 16 years. These are the reasons why this writ of certiorari should be granted.

Respectfully submitted on June 12, 2006.

Cyrus Y. Kim Pro Se
1807 S. 308th CT 11
Federal Way, WA 98003
(253) 946-1834

ORDER DENIED THE PETITION OF REHEARING

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRUIT

No. 05-35818 DC # CV-05-00477-RSM Western District of Washington (Seattle)

CYRUS YOO KIM,

Plaintiff-Appellant,

v.

WASHINGTON STATE DEPARTMENT
OF LICENSING; FRED E. STEPHENS, Agency Director,

Defendants-Appellees.

****

ORDER Filed on May 03 2006
Before: Fernandez, Rymer, and Bybee, Circuit Judges

The full court has been advised of the petition for rehearing en banc and no judges has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P.35.

The petition for rehearing en banc is denied.

No further filing will be accepted in this closed case.

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AFFIRMED JUDGMENT OF APPEALS COURT JUDGES

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 05-35818 D.C. CV-05-00477-RCM

CYRUS YOO KIM,
Plaintiff – Appellant,

v.

WASHINGTON STATE DEPARTMENT
OF LICENSING; FRED E. STEPHENS, Agency Director

Appeal from the United States District Court
For the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding
Submitted February 13, 2006**

****

MEMORANDUM*

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Cyrus Yoo Kim appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging defendants violated his civil rights by suspending his driver's license due to his failure to obtain insurance. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Montana v. Goldin In re Pegasus Gold Corp.*), 394 F.3d 1189, 1193 (9th Cir. 2005), and we affirm.

The district court properly concluded that Kim's claims the Washington State Department of Licensing and its director were barred by sovereign immunity. *See id.* at 1195 (state agencies are protected by Eleventh Amendment immunity); see also Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 (1984) ("The Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest.") (internal quotations omitted).

The remaining contentions lack merit.

AFFIRMED

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

****

ORDER OF DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. CV05-477RSM

CYRUS YOO KIM
Plaintiff,

v.

DEPARTMENT OF LICENSING OF WASHINGTON STATE and Director FRED E. STEPHENS
Defendants.

****

ORDER GRANTING MOTION TO DISMISS

This matter is before the Court on defendants' Rule 12(b)(1) motion to dismiss for lack of jurisdiction. The Court has fully considered defendants' motion, plaintiff's opposition, and the prior litigations history set forth by defendants. For the reasons set forth below, the Court grants defendants' motion.

DISCUSSION

This is the fourth lawsuit in which plaintiff has attempted to challenge the suspension of his driver's license. Plaintiff in the case challenges, as he has before, the constitutionality of two state motor vehicle licensing statutes, the Financial Responsibility law, RCW 46.29, and Mandatory Liability Insurance law, RCW 46.30. He contends that the suspension of his driver's license is cruel and unusual punishment in violation of the Eighth Amendment, and constitutes deprivation of property without due process. His demand for relief amounts to almost $20 million.

Defendants have moved to dismiss on the bases of lack of subject matter jurisdiction and res judicata. Plaintiff has sued on this cause three times before, each time challenging the

:onstitutionality of the statutes. Each suit was dismissed on the)asis of the State's Eleventh Amendment sovereign immunity. Kim v. State of Washington, C04-0217TSZ; Kim v. State of Washington, King County Cause No. 04-2-1000-3 SEA; Kim v. Director of the Department of Licensing, C04-2244C. Plaintiff did ıot appeal any of these dismissals.

In opposing dismissal, plaintiff asserts that in this suit he is hallenging three separate orders suspending his license, dated une 4, 1999, Februray 9, 2001, and February 10, 2005, whereas in is previous suits he was challenging only the 1999 and 2001 rders. He also names different defendants, namely the Department f Licensing and its director Fred Stephens, in place of the State of Vashington. Neither of these distinctions can avoid the application f res judicata and the effect of the State's Eleventh Amendment ınmunity.

Principles of res judicata apply to questions of jurisdiction. ınshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 403 (1940). his Court has twice before found plaintiff's challenge to the ıspension of his driver's license barred the Eleventh Amendment, ıd has dismissed it for lack of subject matter jurisdiction. Kim v. ate of Washington, C04-0217TSZ; Kim v. Director of the epartment of Licensing, C04-2244C. That alone is dispositive of e present motion. Yet even if this were plaintiff's first lawsuit allenging the suspension of his license, this Court would now ıd it barred by the Eleventh Amendment, which grants the states vereign immunity against suit in federal court. Seminole Tribe of)rida v. Florida, 517 U.S. 44, 54 (1996); Pennhurst State School d Hospital v. Halderman, 465 U.S. 89, 100 (1984).

The naming of Department of Licensing Director Fred ephens personally does not change this result, because plaintiff s made no allegations that Mr. Stephens personally derived him driver's license, or otherwise acted in such a way as to subject n to liability under 42 U.S.C. § 1983.* The only allegation

*Plaintiff has nowhere in his complaint made a claim for violation of civil rights under 42 U.S.C. § 1983. Nevertheless, the Court applies this lysis to demonstrate that even if his pro se complaint were liberally construed, ill fails to state a claim within this Court's subject matter jurisdiction.

Against Mr. Stephens is that he "neglected the due care of his duty imposed by RCW 46.29.030 and duty as agency administrator by having left the two statues unconstitutional." Complaint, p. 2. However, the duty imposed upon the director under the cited statute is "to enforce the provisions of this chapter" and to make such "rules and regulations as are necessary for its administration." RCW 46.29.030. Nowhere does the cited statute impose upon the director, personally, any duty of care toward the public. Nor does the director have any duty or indeed any power regarding, in plaintiff's words, leaving "the two statutes unconstitutional"; that is a matter that is in the hands of the legislature.

Plaintiff has failed to overcome the effect of res judicata in this, his third attempt in this Court to plead this cause of action, and has failed to state any claim over which this Court has jurisdiction. As this Court finds once again that this action is barred by the Eleventh Amendment sovereign immunity of the State of Washington, defendants's motion to dismiss is GRANTED, and this action is DISMISSED on the basis of res judicata and for lack of jurisdiction.

DATED the_25_day of July, 2005.

S/RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

****

FIRST SUSPENSION OF DRIVER'S LICENSE

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
P.O. BOX 9029, Olympia, WA 98507-9029

April 5, 1999

KIM, CYRUS YOO
1807 S. 308th CT 11
FEDERAL WAY, WA 98003

FR

ORDER OF SUSPENSION
License #: KIM**CY602c5
Security Req. $5,487.00
FR Case No: 9709260060

We have received information that indicates that you were the uninsured driver of a vehicle involved in an accident on September 26, 1997. There appears to be a reasonable possibility that a civil judgment may be entered against you.

Your driving privilege, and vehicle license plate, KSG200, will be suspended on June 4, 1999 at 12:01 a.m. as required by the provisions of the Financial Responsibility Law, RCW 46.29. You may avoid this suspension by sending verification of one or more of the following items to the address listed in this letter.

1. Proof that liability insurance was in effect for the involved vehicle at the time of this accident. Proof can be a letter from your insurance company, a copy of your insurance card, or a letter from you that includes the insurance company name, policy number, dates of coverage and vehicle description.
2. A notarized statement from all persons shown on the enclosed contact list releasing you from claims from this accident.
3. A copy of a written agreement, with all persons seeking reimbursement, that includes the settlement amount and signatures of all persons making the agreement. The enclosed Contact List indicates the parties seeking reimbursement.
4. Proof that security has been deposited in the amount shown at the top of this letter and proof of financial responsibility for the future. Forms are available by calling or writing this office.
5. A certified copy of a civil court decision showing you not liable for claims from this accident.

the suspension goes into effect, you must surrender your driver's ense to this Department. **Do not drive until we notify that your iving privilege has been reinstated**. You will be required to pay a ssue fee before you can obtain a driver's license.

you feel that you are entitled to an exception of complying with Financial Responsibility Law, complete and return the enclosed tice of Right to Review or Interview postmarked by **April 25, 99**.

ou have questions, contact Customer Service at (360) 902-3900, write to Accident Processing, PO BOX 9029, Olympia, WA 07-9029. Please include your driver's license number, full name, date of birth in all correspondence.

Accident Processing Unit
Driver Responsibility

CASE NUMBER: 9709260060

CONTACT LIST

1.Injured and/ or Property Owners:
JURCA, PETER

Insurance Company:
PROGRESSIVE
P O BOX 1418
RANCHO CORDOVA, CA 95741 – 1418
800-260-3540
CLM#: 970696247

SECOND SUSPENSION OF DRIVER'S LICENSE

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
P.O. BOX 9029, Olympia, WA 98507-9029

January 10, 2001

KIM, CYRUS YOO JD
1807 S. 308th CT 11
FEDERAL WAY, WA 98003

ORDER OF SUSPENSION
License #: KIM**CY602c5
Date of Birth: 02-25-1940 M
Item: 28413

We have received information indicating an unsatisfied civil court judgment has been entered against you in Kent Regional Justice Sup Ct, cause number 98-2-11991-8, as a result of a vehicle accident on September 26, 1997.

Your Washington driving privilege will be suspended on **February 9, 2001** at 12:01 a.m. as required by the provisions of the Financial Responsibility Law, RCW 46.29. You may avoid this suspension by sending verification of one of the following methods:

1. A court-certified abstract showing you have paid the judgment in full.
2. A court-certified abstract showing you have entered into an agreement to make payments.

To make arrangements to satisfy the judgment please contact:

ATTORNEY
JAMES M KRISTOF
7525 SE 24th ST, STE 360
MERCER ISLAND, WA 98040
206-275-0770

PLAINTIFF
PROGRESSIVE

If the suspension goes into effect, you must surrender your driver's license to this Department. **Do not drive until we notify you that your driving privilege has been reinstated.** You will be required to file proof of financial responsibility for the future, and pay a reissue fee before you can obtain a driver's license.

If you have questions, contact Customer Service at (360) 902-3900, or write to Accident Processing, PO BOX 9029, Olympia, WA 98507-9029. Please include your driver's license number, full name, and date of birth in all correspondence.

Accident Processing Unit
Driver Responsibility

The Department of Licensing has a policy of providing equal access to its service. If you need special accommodations, please call (360) 902-3900 or TTY (360) 664-0116.

THIRD SUSPENSION OF DRIVER'S LICENSE

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
P.O. BOX 9029, Olympia, WA 98507-9029

January 11, 2005

KIM, CYRUS YOO
3307 S. 308th CT 11
FEDERAL WAY, WA 98003

APJ

ORDER OF SUSPENSION
License #: KIM**CY602c5
DOB: 02-25-1940 M
Item: 28413

We have received information indicating an unsatisfied civil court judgment has been entered against you in Kent Regional Justice Sup Ct, cause number 98-2-11991-8, as a result of a vehicle accident on September 26, 1997.

Your Washington driving privilege will be suspended on **February 10, 2005** at 12:01 a.m. as required by the provisions of the Financial Responsibility Law, RCW 46.29. You may avoid this suspension by sending verification of one of the following methods:

1. A court-certified abstract showing you have paid the judgment in full.
2. A court-certified abstract showing you have entered into an agreement to make payments.

To make arrangements to satisfy the judgment please contact:

ATTORNEY
JAMES M KRISTOF
7525 SE 24th ST, STE 360
MERCER ISLAND, WA 98040
206-275-0770

PLAINTIFF
PROGRESSIVE

If the suspension goes into effect, you must surrender your driver's license to this Department. **Do not drive until we notify you that your driving privilege has been reinstated**. You will be required to file proof of financial responsibility for future, and pay a reissue fee before you can obtain a driver's license.

If you have questions, contact our Customer Service Unit at (360) 902-3900, or write to Accident Processing, PO BOX 9029, Olympia, WA 98507-9029; or visit our website at www.dol.wa.gov.

Accident Processing Unit
Driver Responsibility

The Department of Licensing has a policy of providing equal access to its service. If you need special accommodations, please call (360) 902-3900 or TTY (360) 664-0116.